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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92055795
Party	Plaintiff Terrence Hastings
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Submission	Motion to Strike
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Signature	/Govinda M. Davis/
Date	03/13/2014
Attachments	N1407 Motion to Strike and Expunge Respondent's Motion for Summary Judgment.pdf(232174 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Trademark Registration No. 4,122,970
For the Mark: E.F. HUTTON
Date registered: April 3, 2012

In the matter of Trademark Registration No. 4,126,754
For the Mark: EF HUTTON and Design
Date registered: April 10, 2012

_____)	
TERRENCE HASTINGS,)	Consolidated Cancellation No. 92055795
)	
Petitioner,)	
)	
v.)	
)	
E.F. HUTTON GROUP, INC.,)	
)	
Respondent.)	
_____)	

Trademark Trial and Appeal Board
Commissioner for Trademarks
PO Box 1451
Alexandria, Virginia 22313-1451

**PETITIONER'S MOTION TO STRIKE AND EXPUNGE RESPONDENT'S
MOTION FOR SUMMARY JUDGMENT**

Petitioner, Terrence Hastings, through his undersigned counsel, hereby submits this Motion to Strike Respondent's Motion for Summary Judgment, pursuant to 37 C.F.R § 2.127 (a) and TMBP § 517. Petitioner moves the Board to strike Respondent's Motion on the grounds that: (i) Respondent improperly filed its Motion for Summary Judgment while the cancellation proceeding was suspended; (ii) Respondent failed to properly serve its Motion for Summary Judgment on Petitioner; (iii) Respondent's Motion for Summary

Judgment is moot in light of Petitioner's Notice of Withdrawal of its Cancellation Petitions; and (iv) Petitioner improperly filed its Motion for Summary Judgment despite the settlement agreement between the parties.

I. Respondent Improperly Filed Its Motion For Summary Judgment While the Cancellation Proceeding Was Suspended

On February 21, 2014, the Board issued an Order suspending the proceedings pending disposition of Petitioner's Motion to Compel testimony of Respondent's attorney and Respondent's Motion for Sanctions. In its Order, the Board indicated that "[t]he parties should not file any paper which is not germane to the motion to compel" pursuant to 37 C.F.R. § 2.120(e)(2). *See* D.E. 25.

After the Board issued its February 21, 2014, Order suspending the proceedings, Respondent filed its Motion for Summary Judgment on February 25, 2014. *See* D.E. 26. Respondent's Motion for Summary Judgment is improper since it is not germane or relevant to Petitioner's Motion to Compel. Thus, the Board should strike Respondent's Motion.

II. Respondent Failed To Properly Serve Petitioner with Its Motion for Summary Judgment

After filing its improper Motion for Summary Judgment on February, 25, 2014, Respondent failed to provide a copy to Petitioner as required by 37 C.F.R. § 2.119. The Trademark Rules of Practice require that "[e]very paper filed in the United States Patent and Trademark Office in inter partes cases . . . be served upon the other parties" [and] [p]roof of such service must be made . . . 37 C.F.R. § 2.119 (alterations added).

As of today, March 13, 2014, Petitioner has not been served with a copy of the Motion for Summary Judgment. In fact, Respondent even omitted a certificate of service from its Motion. Thus the Motion for Summary Judgment should be given no consideration by the Board.

III. Respondent's Motion for Summary Judgment is Moot in Light of Petitioner's Notice of Withdrawal of its Petitions to Cancel

On February 27, 2014, Petitioner filed a Notice of Withdrawal of its Petitions to Cancel Respondent's trademark as a result of an agreement between the parties. In his Notice of Withdrawal, Petitioner requested that the Board dismiss the Petitions to Cancel. Based on Petitioner's Notice of Withdrawal, Respondent's Motion for Summary Judgment is moot since Petitioner seeks a voluntary dismissal, which would end the Cancellation proceedings. Therefore, Petitioner requests that the Board strike Respondent's Motion for Summary Judgment.

IV. Respondent Filed its Motion for Summary Judgment despite the Settlement Agreement between the Parties

As noted above, the parties agreed to resolve these Cancellation Proceedings by a written agreement. Respondent signed the agreement on February 14, 2014, and Petitioner signed on February 20, 2014. A copy of the fully executed agreement was sent to Respondent's counsel on February 20, 2014, for their records. Although the agreement purported to fully resolve the dispute between the parties, Respondent filed its Motion for Summary Judgment on February 25, 2014, and after the parties entered into the agreement. Since the dispute between the parties was contractually resolved at the time that Respondent filed its Motion for Summary Judgment, the brief is moot and Petitioner

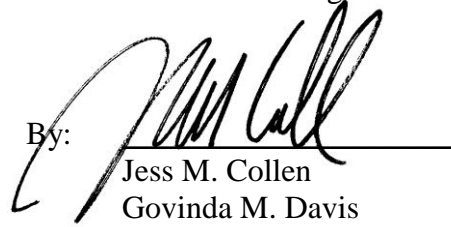
requests that the Board issue an Order both striking the Motion for Summary Judgment and expunging it from the record.

Conclusion

Respondent filed its Motion for Summary Judgment while the proceedings were suspended, failed to serve Petitioner with the Motion and with knowledge that Respondent would withdraw its cancellation proceedings. Therefore, Petitioner respectfully requests that the Board issue an Order striking Respondent's Motion for Summary Judgment.

Respectfully submitted for,
Terrence Hastings

By:

A handwritten signature in black ink, appearing to read 'J. M. Collen', is written over a horizontal line.

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Attorneys for Petitioner

Dated: March 13, 2014

CERTIFICATE OF SERVICE

I, Govinda M. Davis, hereby certify that on March 13, 2014, I caused a true and correct copy of the foregoing **Motion to Strike and Expunge Respondent's Motion for Summary Judgment** to be filed with the Trademark Trial and Appeal Board and served via first class mail, postage pre-paid, upon the following counsel of record:

Shulman Rogers Gandal Pordy & Ecker, P.A.
12505 Park Potomac Ave Fl 6
Potomac, MD 20854-6803
Attention: Mr. Eric J. Von Vorys